

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RUDY GARZA,	)	Case No. CV 12-8553-RGK (JPR)
	)	
Petitioner,	)	
	)	ORDER TO SHOW CAUSE
vs.	)	
	)	
GREG LEWIS, Warden,	)	
	)	
Respondent.	)	
	)	

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On October 4, 2012, Petitioner filed a Petition for Writ of Habeas Corpus by a Person in State Custody. Petitioner indicates that he pleaded guilty to second-degree murder in June 1981 and was sentenced a month later. (Pet. at 2.) He had some kind of subsequent sentencing proceeding in September 1981. (Id. at 7.) Petitioner apparently did not challenge his conviction or sentence on direct appeal. (Id. at 2.) Beginning on September 3, 2011, Petitioner filed a habeas petition in each level of state court, claiming that his plea agreement was breached by his 15-years-to-life sentence because he had been promised he would be sentenced as a youth offender and stay incarcerated only until his 25th birthday. (Id. at 3-5.) Moreover, he claimed, his

1 counsel was ineffective for failing to move to withdraw  
2 Petitioner's plea based on the breached plea agreement. (Id.)  
3 Both the Los Angeles County Superior Court and the California  
4 Supreme Court denied Petitioner's state habeas petitions as  
5 untimely (Pet. Ex. A), whereas the California Court of Appeal  
6 appears to have also reached the merits and found that no  
7 "fundamental miscarriage of justice" occurred (id.).

8 Under the Antiterrorism and Effective Death Penalty Act of  
9 1996 ("AEDPA"), Petitioner had one year from the date his  
10 conviction became final in which to file a federal habeas  
11 petition. See 28 U.S.C. § 2244(d). That statute provides:

12 (1) A 1-year period of limitation shall apply to an  
13 application for a writ of habeas corpus by a person in  
14 custody pursuant to the judgment of a State court. The  
15 limitation period shall run from the latest of--

16 (A) the date on which the judgment became  
17 final by the conclusion of direct review or the  
18 expiration of the time for seeking such review;

19 (B) the date on which the impediment to  
20 filing an application created by State action in  
21 violation of the Constitution or laws of the United  
22 States is removed, if the applicant was prevented  
23 from filing by such State action;

24 (C) the date on which the constitutional  
25 right asserted was initially recognized by the  
26 Supreme Court, if the right has been newly  
27 recognized by the Supreme Court and made  
28 retroactively applicable to cases on collateral

1 review; or

2 (D) the date on which the factual predicate  
3 of the claim or claims presented could have been  
4 discovered through the exercise of due diligence.

5 (2) The time during which a properly filed  
6 application for State post-conviction or other collateral  
7 review with respect to the pertinent judgment or claim is  
8 pending shall not be counted toward any period of  
9 limitation under this subsection.

10 Although Petitioner's one-year limitation period would  
11 normally have begun to run after his conviction became final and  
12 would have presumably expired sometime in 1982, AEDPA extended  
13 the limitation period for those whose convictions became final  
14 before its enactment, on April 24, 1996, to one year after that  
15 date, or April 24, 1997. United States v. Gamboa, 608 F.3d 492,  
16 493 n.1 (9th Cir.), cert. denied, 131 S. Ct. 809 (2010).  
17 Petitioner did not file his federal Petition until October 4,  
18 2012, 31 years after his conviction became final.

19 From the face of the Petition, it does not appear that  
20 Petitioner has any basis for contending that he is entitled to a  
21 later trigger date under § 2244(d)(1)(B). Petitioner is not  
22 contending that he was impeded from filing his federal Petition  
23 by unconstitutional state action. Nor does it appear that  
24 Petitioner has any basis for contending that he is entitled to a  
25 later trigger date under § 2244(d)(1)(C). Petitioner is not  
26 contending that any of his claims are based on a federal  
27 constitutional right that was initially recognized by the U.S.  
28 Supreme Court subsequent to the date his conviction became final

1 and that has been made retroactively applicable to cases on  
2 collateral review. Finally, Petitioner has no basis for  
3 contending that he is entitled to a later trigger date under  
4 § 2244(d)(1)(D). Indeed, Petitioner acknowledges that he knew  
5 the factual basis for his claims at the time of his sentencing.  
6 (Pet., Garza Decl. ¶ 4.) Even if the Court accepts Petitioner's  
7 claim that based on his counsel's assurances he believed that he  
8 would be released from prison on his 25th birthday (id.), his  
9 claim still comes 26 years after he learned the factual basis for  
10 it (see id. ¶ 3 (noting that he was 20 years old at sentencing)),  
11 which would have occurred at the latest when he was not released  
12 from prison when he turned 25.

13 Thus, the Petition is time barred unless Petitioner can show  
14 entitlement to statutory or equitable tolling. See Patterson v.  
15 Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). He has failed to  
16 do so. No basis for statutory tolling under § 2244(d)(2) exists  
17 here, as Petitioner apparently did not file a state habeas  
18 petition until September 3, 2011, 14 years after the AEDPA  
19 deadline had expired. See Ferguson v. Palmateer, 321 F.3d 820,  
20 823 (9th Cir. 2003) (holding that § 2244(d) "does not permit the  
21 reinitiation of the limitations period that has ended before the  
22 state petition was filed," even if state petition was timely  
23 under state law). In any event, the California Supreme Court  
24 dismissed Petitioner's habeas petition as untimely by citing In  
25 re Robbins, 18 Cal. 4th 770, 780, 77 Cal. Rptr. 2d 153, 159  
26 (1998), and therefore he is not entitled to statutory tolling for  
27 that reason as well. See Thorson v. Palmer, 479 F.3d 643, 644-45  
28 (9th Cir. 2007) (holding that citation to Robbins indicates

1 untimeliness and noting that statutory tolling not available for  
2 petitions rejected by state court as untimely).

3 Under certain circumstances, a habeas petitioner may be  
4 entitled to equitable tolling. See Holland v. Florida, 560 U.S.  
5 \_\_\_, 130 S. Ct. 2549, 2560, 177 L. Ed. 2d 130 (2010). A habeas  
6 petitioner is entitled to equitable tolling only if he shows that  
7 (1) he has been pursuing his rights diligently and (2) "some  
8 extraordinary circumstance stood in his way." See Pace v.  
9 DiGuglielmo, 544 U.S. 408, 418, 125 S. Ct. 1807, 1814, 161 L. Ed.  
10 2d 669 (2005). Petitioner has attached to the Petition the  
11 declaration of his jailhouse lawyer, who states that Petitioner  
12 "does not comprehend the law, so there's no way he could have  
13 brought this sooner." (Pet., Treglia Decl.) But ignorance of  
14 the law does not justify equitable tolling. Rasberry v. Garcia,  
15 448 F.3d 1150, 1154 (9th Cir. 2006) (pro se petitioner's lack of  
16 legal sophistication insufficient for equitable tolling). And it  
17 is hard to imagine a circumstance that could entitle him to such  
18 tolling for 15 years. See Doe v. Busby, 661 F.3d 1001, 1015 (9th  
19 Cir. 2011) (noting that equitable tolling of 20 years "would be  
20 difficult to justify").

21 A district court has the authority to raise the statute-of-  
22 limitations issue sua sponte when untimeliness is obvious on the  
23 face of a petition; it may summarily dismiss the petition on that  
24 ground pursuant to Rule 4 of the Rules Governing § 2254 Cases in  
25 the U.S. District Courts, as long as the court gives the  
26 petitioner adequate notice and an opportunity to respond. Herbst  
27 v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

28 IT THEREFORE IS ORDERED that within 28 days of this Order,

1 Petitioner show cause in writing, if he has any, why the Court  
2 should not dismiss this action with prejudice because it is  
3 untimely. If Petitioner intends to rely on the equitable tolling  
4 doctrine, he will need to include with his response to the Order  
5 to Show Cause a declaration under penalty of perjury stating  
6 facts showing that he has been pursuing his rights diligently and  
7 "some extraordinary circumstance stood in his way."

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9  
10 DATED: October 11, 2012

  
JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE